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wherein the ratio by weight of said film of the high performance elastomer to the low performance elastomer is in a range from about 60/40 to about 40/60.

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### REMARKS

Applicants respectfully request reconsideration of this patent application. Claims 1-15 and 33-40 are currently pending.

#### Amendments to the Specification

Applicants have amended the Specification at pages 6-7. In the Preliminary Amendment filed 08 March 2002, Applicants stated that the support for the amendment to Claim 1 was Claim 24 as originally filed. The amendment to the Specification herein at pages 6-7 includes language from Claim 24, as originally filed. No new matter has been introduced.

#### Amendments to the Claims

Claim 15 has been canceled.

Claims 1 and 33 have been amended to recite that "wherein the ratio by weight of said film of the high performance elastomer to the low performance elastomer is in a range from about 60/40 to about 40/60." This Amendment is supported in the Specification on page 21, lines 1-8, and page 43, lines 8-15, and also

by the data presented and discussed on pages 31-43, and Table 6 on page 38, Samples 4 and 10. Claim 1 has also been amended to change "a low performance elastomer portion" to "the low performance elastomer portion."

### **Elections/Restrictions**

Applicants hereby affirm the election made without traverse by the "Amendment and Response to Restriction Requirement" mailed 19 July 2002. The election was made to prosecute the invention of Group 1. This election includes Claims 1-14 and 33-40. Claims 16-32 and 41-61 were canceled. The Examiner states on page 2 of the 26 August 2002 Office Action that "Non-elected claims 15-32 and 41-61 have been canceled in the amendment received on 07/25/2002." The "Amendment and Response to Restriction Requirement" mailed on 19 July 2002 canceled Claims 16-32 and 41-61. Claim 15, the independent Claim directed to a laminate material, has been canceled with this Amendment in response to the 26 August 2002 Office Action.

### **Claim Rejections - 35 U.S.C. §102**

#### **a) McCormack - U.S. Patent 5,695,868**

In paragraph 3 on Page 2 of the 26 August 2002 Office Action, the Examiner has rejected Claims 1-8, 12, 13 and 33-37 under 35 U.S.C. §102(b) as

being anticipated by McCormack (U.S. Patent 5,695,868). This rejection is respectfully traversed.

The Examiner states that McCormack '868 discloses a breathable film comprising LLDPE, a filler and a bonding agent, citing Col. 5, lines 51-54, and that the film is formed by mixing the LLDPE, bonding agent and filler together. The Examiner also states that McCormack '868 discloses that the bonding agent is a styrenic block copolymer, citing Col. 6, lines 58-60 and that the filler is calcium carbonate. The Examiner interprets that "the blending or compounding process of LLDPE, styrenic block copolymer and the filler calcium carbonate particles disclosed in McCormack US '868 would clearly result in the recited blended or compounded material comprising LLDPE and styrenic block copolymer as set forth in the claims."

Claim 1 was amended via the 08 March 2002 Preliminary Amendment to reflect the fact that the claimed breathable, elastic film comprises a blended or compounded material of high performance elastomer and low performance elastomer, wherein the low performance elastomer is filled with a plurality of particles suitable for forming pores in the film upon stretch-thinning of the film.

Applicants recognized the teaching of the breathable films and laminates of breathable films of McCormack '868 in the Specification at page 5, lines

1-4. However, McCormack '868 does not disclose a blend including a high performance elastomer and a low performance elastomer.

Furthermore, Claims 1 and 33 have been amended to recite that the ratio of high performance elastomer to low performance elastomer is approximately 60/40 to 40/60.

Therefore, McCormack '868 does not disclose a breathable film comprising a high performance elastomer and a low performance elastomer, in a ratio of from about 60/40 to about 40/60 as required by Applicants' independent Claims 1 and 33, as amended. The 35 U.S.C. §102(b) rejection should therefore be withdrawn with respect to these claims. Claims 2-8, 12 and 13 depend on Claim 1, as amended. Claims 34-37 depend on Claim 33, as amended. Therefore, the 35 U.S.C. §102(b) rejection should also be withdrawn with respect to these claims.

**b) International Patent Publication WO 99/47590**

In paragraph 4 on Page 3 of the 26 August 2002 Office Action, the Examiner has rejected Claims 1-10 and 33-39 under 35 U.S.C. §102(b) as being anticipated by International Patent Publication WO 99/47590 ("WO '590"). This rejection is respectfully traversed.

The Examiner states that the WO '590 publication teaches a film segment comprising a microporous LLDPE film having calcium carbonate particles.

The WO '590 publication does not disclose a ratio of high performance elastomer to low performance elastomer of approximately 60/40 to 40/60.

Accordingly, Applicants respectfully urge that the WO '590 publication does not anticipate the invention claimed by Applicants in independent Claims 1 and 33, as amended. Thus, the 35 U.S.C. §102(b) rejection should be withdrawn with respect to these claims. Claims 2-9 depend on Claim 1, as amended. Claims 34-39 depend on Claim 33, as amended. Therefore, the 35 U.S.C. §102(b) rejection should also be withdrawn with respect to these claims.

**c) McCormack - U.S. Patent 6,015,764**

In paragraph 5 on Page 3 of the 26 August 2002 Office Action, the Examiner has rejected Claims 1-4, 6-10, 12, 33-36, 38 and 39 under 35 U.S.C. §102(e) as being anticipated by McCormack et al. (U.S. Patent 6,015,764). This rejection is respectfully traversed.

The Examiner states that McCormack '764 discloses an oriented microporous film comprising styrenic block copolymer, ethylene copolymer and a filler, citing Col. 3, lines 1-4 and 17-41.

However, there is no disclosure of a film which contains both a high performance elastomer and a low performance elastomer blended together. There is no disclosure of a blend of a high performance elastomer with a low performance

elastomer in a ratio of high performance elastomer to low performance elastomer of approximately 60/40 to 40/60.

Thus, the 35 U.S.C. §102(e) rejection should be withdrawn with respect to these claims. Claims 2-4 and 6-10 and 12 depend on Claim 1, as amended. Claims 34-36, 38 and 39 depend on Claim 33, as amended. Therefore, the 35 U.S.C. §102(e) rejection should also be withdrawn with respect to these claims.

**Claim Rejections - 35 U.S.C. §103**

**a) McCormack - U.S. Patent 5,695,868**

In paragraph 7 on Page 4 of the 26 August 2002 Office Action, the Examiner has rejected Claims 9, 10, 38 and 39 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as being obvious over McCormack (U.S. Patent 5,695,868). Applicants respectfully traverse this rejection.

Applicants' arguments with respect to McCormack '868 as discussed hereinabove are equally applicable to this rejection and will not be repeated other than to reiterate that McCormack '868 does not suggest a film comprising a high performance elastomer and a low performance elastomer blended together in a ratio of approximately 60/40 to 40/60.

Claims 9-10 depend on Claim 1, as amended, and are patentable for at least the same reasons as Claim 1, as amended. Claims 38-39 depend on Claim 33,

as amended, and are patentable for at least the same reasons as Claim 33, as amended. Therefore, the 35 U.S.C. §103(a) rejection should be withdrawn.

In paragraph 8 on Page 5 of the 26 August 2002 Office Action, the Examiner has rejected Claims 11, 14, and 40 under 35 U.S.C. §103(a) as being obvious over McCormack (U.S. Patent 5,695,868). Applicants respectfully traverse this rejection.

Applicants' arguments with respect to McCormack '868 as discussed hereinabove are equally applicable to this rejection and will not be repeated other than to reiterate that the reference does not suggest a film comprising a high performance elastomer and a low performance elastomer blended together in a ratio of approximately 60/40 to 40/60.

Claims 11 and 14 depend on Claim 1, as amended and are patentable for at least the same reasons as Claim 1, as amended. Claim 40 depends on Claim 33, as amended, and is patentable for at least the same reasons as Claim 33, as amended. Therefore, the 35 U.S.C. 103(a) rejection should be withdrawn.

**b) International Patent Publication WO 99/47590**

In paragraph 9 on Page 5 of the 26 August 2002 Office Action, the Examiner has rejected Claims 11-14, and 40 under 35 U.S.C. §103(a) as being obvious over WO '590. Applicants respectfully traverse this rejection.

Applicants' arguments with respect to WO '590 as discussed hereinabove are equally applicable to this rejection and will not be repeated other than to reiterate that the reference does not suggest a film comprising a high performance elastomer and a low performance elastomer blended together in a ratio of approximately 60/40 to 40/60. Claims 11-14 depend on Claim 1, as amended, and are patentable for at least the same reasons as Claim 1, as amended. Claim 40 depends on Claim 33, as amended, and is patentable for at least the same reasons as Claim 33, as amended. Therefore, the 35 U.S.C. 103(a) rejection should be withdrawn.

**c) McCormack - U.S. Patent 6,015,764**

In paragraph 10 on Page 5 of the 26 August 2002 Office Action, the Examiner has rejected Claims 11, 13, 14, and 40 under 35 U.S.C. §103(a) as being obvious over McCormack et al. (U.S. Patent 6,015,764). Applicants respectfully traverse this rejection.

Applicants' arguments with respect to McCormack '764 as discussed hereinabove are equally applicable to this rejection and will not be repeated other than



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to reiterate that the reference does not suggest a film comprising a high performance elastomer and a low performance elastomer blended together in a ratio of approximately 60/40 to 40/60. Claims 11, 13, 14 depend on Claim 1, as amended, and are patentable for at least the same reasons as Claim 1, as amended. Claim 40 depends on Claim 33, as amended, and is patentable for at least the same reasons as Claim 33, as amended. Therefore, the 35 U.S.C. 103(a) rejection should be withdrawn.

#### **Conclusion**


Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner feels that any issues remain unresolved, Applicants' attorney respectfully requests a telephone interview with the Examiner. The undersigned can be reached at (847) 490-1400.

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Applicants sincerely believe that this patent application is now in condition for allowance and, thus, respectfully request allowance.

Respectfully submitted,



Margaret M. Crosby  
Regis. No. 40,969

Pauley Petersen Kinne & Erickson  
2800 West Higgins Road  
Suite 365  
Hoffman Estates, Illinois 60195  
TEL (847) 490-1400  
FAX (847) 490-1403



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## VERSION WITH MARKINGS TO SHOW CHANGES MADE

### In the Specification:

Page 6, lines 14-21 through Page 7, lines 1-6; replace the paragraph with the following replacement paragraph:

These and other objects of this invention are addressed by a breathable elastic film comprising a blended or compounded product formed by blending or compounding a high performance elastomer and a filled low performance elastomer, the [filled with] filler including a plurality of particles suitable for forming pores in the film upon stretch-thinning of the film. In accordance with a particularly preferred embodiment of this invention, the high performance elastomer is a styrenic block copolymer and the low performance elastomer is a polyolefin. Upon stretch-thinning of the film, micropores are formed by the low performance elastomer portion of the film. In accordance with one embodiment of this invention, the high performance elastomer is also filled with particles suitable for pore formation whereby, upon stretch-thinning of the film, micropores are formed by both the high performance elastomer portion and the low performance elastomer portion of the film. The microporous stretch-thinned film of this invention demonstrates both high

breathability as well as elastic stretch properties greater than 100 percent and recovery.

**In the Claims:**

1. (Twice Amended) A breathable, elastic film comprising:

a blended or compounded material comprising a high performance elastomer and a low performance elastomer, said low performance elastomer filled with a plurality of particles suitable for forming pores in said film upon stretch-thinning of said film, said film having been stretch-thinned, whereby [a]the low performance elastomer portion of said film forms a plurality of micropores;

wherein the ratio by weight of said film of the high performance elastomer to the low performance elastomer is in a range from about 60/40 to about 40/60.

33. (Amended) A breathable, elastic film comprising:

a blend of a high performance elastomer and a low performance elastomer, said blend filled with a plurality of particles suitable for forming pores in said film upon stretch-thinning of said film, said film having been stretch-thinned, whereby a plurality of micropores are formed in said film;

wherein the ratio by weight of said film of the high performance elastomer to the low performance elastomer is in a range from about 60/40 to about 40/60.